
From: Reich, Kevin R. <KReich@gibbonslaw.com>
Sent: Tuesday, February 28, 2023 4:57 PM
To: Lustberg, Lawrence S; Valen, Thomas R.
Subject: Hwang/Archegos -- DRAFT call recap

Larry and Tom – here is a draft recap. [REDACTED]
[REDACTED]

Following is a recap of the 30-minute call we had this afternoon with the SDNY, largely to talk about the pretrial schedule, a proposal for which the SDNY sent via email on 1/19. Attendees included:

- From the Government: AUSAs Andrew Thomas (who spoke on behalf of the SDNY), Danielle Sassoon, and Matt Podolsky [is this right? I joined just as they were announcing themselves]
- From Gibbons: Larry, Tom, and I
- From FK: Mary and Tim

Larry raised three topics related to the schedule, to which Mary added her perspective:

1. **Expert reports.** Ds' position, given the significant role the Govt has said experts will play in the case, is that the process should begin sooner than what the Govt proposed so that Daubert motions/hearing are not unnecessarily compressed. Moreover, the Govt should file its expert reports first since they have the burden of proof. Accordingly, we proposed that the Govt file its reports on July 16 [a Sunday] with Ds filing their reports, which would be responsive in nature, on August 7. The deadline for Daubert motions was left TBD. Andrew Thomas simply responded that "we'll put some thought into it."
2. **3500/Giglio disclosures.** Under the Govt's proposal, these disclosures would occur 6 weeks before trial, or on November 28. Larry explained that without knowing the approximate volume of 3500/Giglio material, it's hard to say whether this timeframe is sufficient, though it seems tight given what we assume will be a fairly substantial production. Thus, Larry asked the Govt if it could give us a broad sense of the volume. Mary added that, in light of the scope of the case and although not required by the Rules, it would also be helpful to receive (1) a preliminary witness list at the same time the 3500/Giglio material is produced so we can better focus our review; (2) identification (presumably by Bates number) of any documents referred to in the Giglio disclosures; and (3) a date certain by which the Govt will give us a final witness list. Andrew Thomas initially responded that these issues can be most orderly addressed via a written counterproposal. He then said that the Govt viewed the T-6 deadline for disclosure in its proposal as generous and on the early side of what the SDNY typically does, given the anticipated amount of material at issue, but, again, invited a counterproposal of dates. He concluded by saying that because we're still 11 months from trial, the potential witnesses and thus the quantity of 3500/Giglio material is not yet known but that they'd give the issue some further thought.
3. **Exhibits and stips.** Larry made two points here. *First*, D's position is that exhibits and 404(b) material should be furnished on one date, with time thereafter to negotiate stips regarding those exhibits. *Second*, Ds would like to receive any audio recordings that the Govt plans to offer as evidence several weeks before the other exhibits so we have adequate time to assess them. Mary added that the Govt's proposal did not – but should – include a date for receipt of final transcripts. Andrew Thomas suggested that one way to deal with the first issue is for the Govt to send a proposed stip along with the exhibits that correspond to it, which Larry agreed could work. Moreover, the Govt is amenable to entering into further stipulations, as necessary, after the date in their proposal. He did not address the second point about the audio recordings.

Finally, Larry gave the Govt a heads-up about the **Rule 17 subpoena motion**. He explained that because the trading data we have varies so widely by counterparty, we'll be seeking pre-trial production of such data from the CPs. Although that application could be filed ex parte, Larry said we're not going to do so here. He also noted that the Govt's 2/23 production and cover letter did not really move the ball much in terms of the market data regarding the seven stocks charged in the Indictment. I mentioned the difficulty we're continuing to have deciphering this data, including fundamentally identifying what it is: Archegos trades? CP trades? All trades? Andrew Thomas said that, as he understood it, the ICE data was execution data through the NYSE system; ICE does not know who does the trading, but it's not just Archegos. He also said that the Govt's 2/23 cover letter did not mention the NASDAQ data because the Govt is having trouble getting an explanation from NASDAQ about what the fields in those files are. [REDACTED]

[REDACTED] Andrew Thomas concluded by wishing us luck with the Rule 17 subpoenas.

We ended by asking if the Govt had anything it wanted to raise, to which they responded no.

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